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Before the
Federal Communications Commission
Washington, D.C. 20554

JUN 9 2 45 PM '94

MM Docket No. 93-75

DISSEMINATED BY

In re Applications of

TRINITY
BROADCASTING OF
FLORIDA, INC.

File No. BRCT-911001LY

For Renewal of License of
Station WHFT(TV)
Miami, Florida

and

GLENDALE
BROADCASTING
COMPANY

File No. BPCT-911227KE

For Construction Permit
Miami, Florida

MEMORANDUM OPINION AND ORDER

Adopted: May 27, 1994;

Released: June 8, 1994

By the Commission: Commissioners Ness and Chong not participating.

1. Before the Commission is a May 7, 1993 Petition for Reconsideration of *Hearing Designation Order*, 8 FCC Rcd 2475 (1993) (*HDO*), filed jointly by the Spanish American League Against Discrimination (SALAD) and the League of United Latin American Citizens (LULAC).¹ We are dismissing the Petition for the reasons set forth below.

2. Section 1.106(a)(1) of the Commission's rules provides that petitions for reconsideration of hearing designation orders will be considered "if, and insofar as, the petition

relates to petitioner's participation in the proceeding." It further provides that "[p]etitions for reconsideration of other interlocutory actions will not be entertained." 47 C.F.R. § 1.106(a)(1). Neither SALAD nor LULAC argues that their participation in this proceeding was affected by the *HDO*, and they have not demonstrated any reason that the Commission should depart from that provision of the rule otherwise precluding reconsideration. They argue that the aspect of the *HDO* they challenge is a "final" order subject to reconsideration, not an "interlocutory" order. We reject this argument.²

3. In the *HDO*, we determined that a hearing on the renewal application of Trinity Broadcasting of Florida, Inc.'s (Trinity) station WHFT(TV) is necessary to consider issues of unauthorized *de facto* control and abuse of Commission processes. At the same time, pursuant to *Grayson Enterprises, Inc.*, 79 FCC 2d 936 (1980), we considered whether to call for early renewals or institute revocation proceedings against Trinity's other licensed stations.³ We concluded that, on the evidence before us, we could not determine that the charges leading to designation of the WHFT license renewal application are so fundamental as to affect Trinity's qualifications to hold any station license. Therefore, we declined to take action against Trinity's other licenses and expressly stated that they are freely transferable pending the outcome of the WHFT proceeding.⁴ *HDO*, 8 FCC Rcd at 2482 ¶ 45. SALAD and LULAC contend that this conclusion constitutes a "final" decision because they are now "conclusively barred from raising the issues designated in [the WHFT] proceeding" in any subsequent petition to deny transfer, assignment or renewal of other Trinity station licenses. SALAD and LULAC err. Assuming they both can establish standing, they are not precluded from opposing future Trinity applications, and action vis-a-vis such applications is "final" only when public notice of the action appears. See 47 C.F.R. § 1.103.⁵

4. *RKO General, Inc.*, 1 FCC Rcd 1081 (1986), cited by SALAD and LULAC for the proposition that they are precluded from raising the designated issues in petitions to deny future Trinity applications, should not be so broadly read. At issue there was an assignment application for RKO's station WOR-TV, Secaucus, New Jersey. The proceeding was unique in its circumstances because RKO, enmeshed in numerous charges of misconduct at various facilities, had just been granted a five-year renewal for WOR pursuant to action taken under a new section of the Communications Act, 47 U.S.C. § 331, enacted to encourage licensees to move to the state of New Jersey, which had no VHF outlet. Based on several factors, we concluded that

¹ The Mass Media Bureau (MMB) filed a Motion to Dismiss the Petition on May 17, 1993 and Trinity Broadcasting of Florida, Inc. (Trinity) opposed the Petition on May 20, 1993. SALAD and LULAC filed a Reply to the Opposition on June 2, 1993.

² Trinity and the MMB argue that LULAC does not have standing to petition for reconsideration of the *HDO*. Since in any event we are dismissing the Petition pursuant to 47 C.F.R. § 1.106(a)(1), we need not address that argument here.

³ *Grayson* required that, when the Commission designates a license application of a multiple owner for hearing, it simultaneously decide the transferability of his other stations, but any limit on transferability could be expressed either by including a statement in the designation order, attaching a condition on the renewal of the multiple owner's other stations, or designating the other stations for early hearing. *Grayson*, *supra*, 79 FCC 2d

940 at n.8. Subsequently the Commission modified *Grayson* to eliminate the option of conditioning other station license renewals on the outcome of the hearing, so that the Commission now either designates the licensee's other station licenses for early renewal or permits them to be transferred freely. *Modification of Grayson Enterprises Policy on Transferability*, 53 RR 2d 126 (1983).

⁴ We made the same determination regarding stations licensed both to Trinity Broadcasting Network (TBN), an affiliate of Trinity, and to National Minority TV, Inc. (NMTV), to whom the charges specified in the *HDO* also related. However, since Petitioners challenge only our determination as to Trinity, we will limit our discussion to Trinity.

⁵ In light of this ruling, we need not consider now SALAD and LULAC's further arguments that the portion of the *HDO* they challenge is a departure from established Commission policy.

Congress "intended to give a 'clean slate' to any qualifying licensee that volunteered to move." 1 FCC Rcd at 1083 ¶ 14. Therefore, we did not consider petitions to deny the assignment to the extent that they relied on alleged RKO misconduct prior to grant of the WOR license. *Id.*⁶ However, we did consider petitions to deny to the extent that they relied on allegations of RKO misconduct occurring subsequent to grant of the WOR license and concluded that "a determination to permit [the] sale [was] amply supported ... as [a matter] of what will now best serve the public interest." *Id.* at 1084-1085. Similarly, we would grant future Trinity applications only after fully considering allegations raised in any petition to deny and making a reasoned determination that, despite those allegations, the public interest favors a grant.⁷

5. Accordingly, IT IS ORDERED, That the Motion to Dismiss filed by the Mass Media Bureau on May 17, 1993 IS GRANTED and the Petition for Reconsideration of *Hearing Designation Order*, 8 FCC Rcd 2475 (1993), filed May 7, 1993 by the Spanish American League Against Discrimination and the League of United Latin American Citizens IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION



William F. Caton
Acting Secretary

⁶ See also *Straus Communications, Inc.*, 2 FCC Rcd 7469, 7470 ¶ 7-8 (1987) (upholding Bureau decision to grant assignment application despite character issues designated against assignor in another proceeding when Bureau had considered allegations raised in informal objection to assignment and balanced public interest factors involved in light of allegations raised therein).

⁷ See 47 U.S.C. § 309(d)(2) (requiring that an application be designated for hearing when a petition to deny raises substantial and material questions of fact). In this regard, we note that the *Grayson* policy by its own terms does not foreclose consideration of petitions to deny applications to renew, assign, or

transfer simply because they are based on allegations pending in another proceeding. Cf. *Trinity Christian Center of Santa Ana, Inc.*, 8 FCC Rcd 4038 n.1 (1993) (indicating in response to allegations raised in a petition to deny renewal application of Trinity's WHSG(TV) that, though issues raised would not be specified or adjudicated in the WHSG proceeding because they are already under consideration in this Miami proceeding, any grant of the WHSG application "shall be subject to whatever action the Commission deems appropriate in light of the final resolution of issues ... specified in the *Hearing Designation Order* in the Miami proceeding").